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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,682	04/13/2001	Robert Eugene Vogt	29566/KC15,412	4329

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EXAMINER
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REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 01/12/2004

22

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/834,682

Applicant(s)

VOGT ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3-14 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) 6,7,13 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,8-12 and 21-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 18, 21
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11-03-03 has been entered.

### ***Election/Restrictions***

2. Claims 6-7 and 13-14 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 4.

### ***Specification***

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For example:

### ***Drawings***

4. The drawings were received on 8-11-03. These drawings are approved.

***Description***

5. The disclosure is objected to because of the following informalities: 1) The Summary of the Invention Section, i.e. a description of the claimed invention, and the invention of the claims are not commensurate, see MPEP 608.01(d) and 1302.01, e.g. where is the strength of attachment in the first embodiment set forth?

Appropriate correction is required.

***Claim Language Interpretation***

6. Applicants have not specifically defined any claim language and therefore the language will be given its common, i.e. dictionary, definition. It is noted, see, e.g., claim 8, lines 7-9, that the outer portion is not set forth as only being defined between the fastener receptive area on the front portion and the outer edge of the lateral section or extends from the area to the edge (It is noted that the specification as originally filed does not specifically disclose where the inner portion stops and the outer portion begins. However, it is disclosed that the fastener is attached to the inner portion and to the receptive area and the outer portion extends from the inner portion to the outer edge, so some part of the outer portion must be between the receptive area and the outer edge). The claim only requires some portion of the outer portion be between the area and the edge. It is further noted that, e.g., see claim 8, lines 12-19 and similar language in claim 22, the claims only require sites which are 1) inward of and 2) adjacent to the side edges and 3) which are closest to the inner edge of the fastener to be 4) closer to the side edge than the inner edge ("adjacent" as defined by the dictionary is "Close to, lying near. Next to; adjoining"),

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i.e. sites which are not inward of and adjacent to the side edges are not required to be closer to the side edge. It is also noted that "adjacent" is also a relative term absent claiming of a specific distance. It is noted that the claims do not require the outer portion to be attached to the front portion only by "the at least one attachment site" having requirements 1)-4) supra. It is finally noted that a "fastener receptive area", "a releasable fastener" and releasable fastening to the front portion as claimed in claims 8 and 22 do not require the capability of refastening after release.

### ***Claim Objections***

7. Claims 1, 3-5, 8-12 and 21-24 are objected to because of the following informalities: in claim 8, lines 9-10, "the respective...section" should be deleted. In (d), after ",", --and-- should be inserted. In the last section, line 2, after "weak", --such-- or --so-- should be inserted. This also applies to similar language in claim 22. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

8. Claims 1, 3-5, 8-12 and 21-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 8, is the portion of the front portion releasably fastened to the releasable fastener on lines 10-11 and the fastener receptive area on line 4 one and the same, i.e. how many fastener receptive portions at a minimum are required? This also applies to similar language in claim 22. In regard to claim 24, are the "areas adjacent the side edges" and "said front portion inwardly of but adjacent" the side edges, see claim 22, lines 11-13, one and the

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same? If not, how can the outer portion be attached there but the lateral sections not be attached there?

9. Claims 22-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Where is the support for the claim language of claim 22, lines 16-18 and last five lines and the last four lines of claim 24? It is noted with regard to claim 24, "attachment" includes both direct and indirect attachment, i.e. where is it disclosed the lateral sections are free from indirect attachment to the front portion? With regard to claim 22, where are the attachment sites disclosed as "configured to stretch" as claimed? Also while it is disclosed that the lateral sections are elasticized in the lateral direction and the sites preventing folding during manufacture and/or putting on the article and control lay of the outer portions of the lateral sections, the claim language does not require such, i.e. the lateral sections could be stretchable longitudinally as claimed and/or the folding over could be during packaging. If Applicants traverse this rejection the specific portions of the specification relied upon which are of the same scope as the claim language should be set forth.

***Claim Rejections - 35 USC § 102***

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 1, 3-5, 8-12 and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Romare '484.

Claims 8, 3-5, 10-12: See Claim Language Interpretation section supra, and abstract, Figures, especially Figures 2-3, col. 1, line 57-col. 2, line 22, col. 2, lines 40-63, col. 3, line 21-col. 4, line 21, col. 4, lines 26-66 and col. 5, lines 6-53, i.e. Romare discloses a personal care article having a longitudinal axis and comprising a front portion, 6 or 106; a back portion, 7 or 107; a crotch portion, 8 or 108; fastener receptive area, 17 or the area beneath releasable fastening points adjacent 115 and 116 or both; lateral sections 113, 114, see col. 3, lines 40-42, 46-47 and 61-65; which have inner portions, adjacent 115 and 116; outer portions; at least portions of 113 and 114 adjacent 110 (Note the dashed lines in Figure 3 denoting the edge of the absorbent 103 and side edges of 106 and see element 17 in Figure 2 with regard to the dashed line denoting the absorbent 3 and the solid lines denoting the side edges of 6); outer edges, 113 and 114 adjacent side edges of back portion; releasable fasteners, 115, 116 or releasable fastening points adjacent 115 and 116 or both; having an inner edge and releasably fastened to the front portion closer to the longitudinal axis than to the outer edge, see Figure 3; the outer portion of the lateral sections attached at at least one attachment site to the front portion inwardly of but adjacent the side edges, at least the points 110 closest to or next to the side edges of front portion 6; and one or more of such sites which are closest to the inner edge of the releasable fastener, at least the points 110 closest to or next to the side edges; closer to the side edge than to the inner edge, see Figure 3. With regard to last 4 lines of claim 8, see, e.g., col. 2, lines 7-12, col. 4, lines 4-21, col. 5, lines 14-31. Therefore, while the Romare patent is believed to explicitly set forth the strength of attachments, even if not, the structure of the fastenings of Romare is the

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same as that claimed. Therefore there is sufficient factual basis for one to conclude that the capabilities and functions of such claimed structure are also inherent in the same structure of Romare, see MPEP 2112.01.

Claims 1 and 9: see Figure 3 and col. 3, lines 58-65.

Claim 21: see Figures and, e.g., col. 3, line 58-col. 4, line 21, and col. 5, lines 14-25.

Claims 22-23: see discussion of claims supra. Additionally with regard to lines 16-18 and 23 et seq, i.e. these lines set forth the functions, capabilities and properties of the lateral sections and attachment site structure, see cited portions supra, especially col. 2, lines 12-13, col. 3, lines 34-36, col. 5, lines 6-7. Therefore, while the Romare patent is believed to explicitly set forth lateral sections and attachment sites which are stretchable in the waist encircling direction, i.e. configured to stretch as claimed due to lateral elasticity, and sites which stabilize as claimed, even if not, the structure of the sections and sites of Romare as configured is the same as that claimed. Therefore there is sufficient factual basis for one to conclude that the capabilities and functions of such claimed structure are also inherent in the same structure of Romare, see MPEP 2112.01.

Claim 24: As best understood, see discussion of claims supra and Figure 3, i.e. the space adjacent the ends of the lines from 113 and 114 are free from direct attachment and such spaces are between the releasable fastening at the inner portion and "areas adjacent" adjacent the side edges, i.e. the areas between the two dashed lines at the ends of the lines from 110 in Figure 3.



*Response to Arguments*


12. Applicants remarks with regard to the matters of form have been noted but are either deemed moot in that they have not been reraised or are deemed nonpersuasive for the reasons set forth supra. Applicant's remarks with regard to Romare have been considered but are deemed narrower than the claim language, e.g. the attachment sites closest to the inner edge also must be inwardly and adjacent the side edges and are not required to be the only attachment sites, a specific amount of stretchability is not claimed, and narrower than the Romare disclosure, see, e.g., col. 2, line 12-13, i.e. the Romare waist line is stretchable. It is noted that the species of the invention which has an intact separation line is not the elected species. See col. 5, lines 40-44 of Romare.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

  
Karin M. Reichle  
Primary Examiner  
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